

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Lowell Floyd Hagen and Kay Mary Hagen,

Debtors: Chapter 13 Case
Case No. BKY 04-41058-RJK.

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY**

TO: The Debtors, Debtors' Attorney, Chapter 13 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 1204(a).

1. **CitiFinancial Mortgage Industrial Loan Company (Movant)**, a secured creditor of the Debtors herein, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 2:00 o'clock p.m., on November 4, 2004, before the Honorable Robert J. Kressel, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, 55415, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than November 1, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 26, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2, and Movant seeks relief from the automatic stay of 11 U.S.C. §362 and §1301 with respect to certain real property owned by the Debtors and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 13 Case was filed on March 2, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local

Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated October 19, 2001, in the original principal amount of \$167,799.29 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

Lot 20, Block 1, Anoka Meadows Second Addition, Anoka County, Minnesota.

The Mortgage was filed for record in the office of the County Recorder, in and for Anoka County, Minnesota, on November 1, 2001 as document number 383238. Kay M. Hagen, a co-mortgagor, is also liable on the mortgage.

7. The terms of Debtors' confirmed Chapter 13 plan (**Plan**) require Debtors to make post-petition Mortgage payments directly to Movant when due. Debtors are delinquent with respect to post-petition Mortgage payments for the months of August 2004 through October 2004 in a total amount of \$4,141.32, excluding late charges.

8. Debtors' three (3) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) and §1301(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 15th day of October, 2004.

PETERSON, \FRAM AND BERGMAN
A Professional Association

BY: /e/ Steven H. Bruns
Steven H. Bruns
Atty. Reg. #14888X
Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Lowell Floyd Hagen and Kay Mary
Hagen,

Debtors: Chapter 13 Case
Case No. BKY 04-41058-RJK.

**AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

I, LAURA PHILLIPS, your affiant, being first duly sworn on oath, state as follows:

1. I am an employee of **CitiFinancial Mortgage Industrial Loan Company (Movant)**, and I have personal knowledge of the facts stated herein.
2. I make this Affidavit in support of a motion to lift, modify or condition the bankruptcy stay.
3. Debtors are the mortgagors on a mortgage dated October 19, 2001 which covers real property located in Anoka County and legally described as follows:

Lot 20, Block 1, Anoka Meadows Second Addition, Anoka
County, Minnesota,

and which is commonly known as: 3201-16th Avenue, Anoka, MN 55303. The mortgage was given to secure a promissory note. A copy of the mortgage is attached hereto as Exhibit A and incorporated herein by this reference.

4. On or about March 2, 2004, Debtors filed a Petition under Chapter 13 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Movant filed a Proof of Security Interest Claim with the Court on or about March 19, 2004.

6. Debtors' Chapter 13 Plan (**Plan**) provides that Debtors will maintain payments due during the pendency of this case and cure an existing default within a reasonable time.

7. Debtors have failed to make three (3) payments, which were due during the pendency of this case, resulting in an arrearage of \$4,141.32, excluding late charges.

8. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

Further, I saith not.

CitiFinancial Mortgage Company Inc.

LAURA PHILLIPS
ASSISTANT SECRETARY

Subscribed and sworn to before me
this 14th day of October, 2004.

Notary Public



383238

MORTGAGE

THIS MORTGAGE, made on 10/19/01 by Lowell F. Hagen and Kay M. Hagen, husband and wife, as joint tenants

of ANOKA

Mortgage (whether one or more) to Financial Mortgage Industrial Loan Company Corporation called Lender in this Mortgage.

County and State of Minnesota called the Borrower in this
a Minnesota

Witnesseth, that Borrower, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby Grant, Bargain, Sell, Mortgage and Convey unto Lender, its successors and assigns, forever, the following described real property which is situated in the County of ANOKA and State of Minnesota, called the Property in this Mortgage:

Lot 20, Block 1, Anoka Meadows Second Addition, Anoka County, Minnesota

See Exhibit A attached hereto, incorporated herein and made a part hereof.

which has the following street address: 3201 16TH AVENUE NORTH, ANOKA MN 55303

(called "Property Address" in this Mortgage):

To Have and to Hold the Same, Together with the hereditaments and appurtenances thereto belonging, to the Lender, its successors and assigns, forever. And the Borrower for its heirs, administrators, executors and assigns, does hereby covenant with Lender, its successors and assigns, as follows:

1. Borrower is lawfully seized of the Property and has good right to sell and convey the same; that the same are free from all encumbrances.
2. The Lender, its successors and assigns, shall quietly enjoy and possess the same; and that the Borrower will Warrant and Defend the title to the same against all lawful claims not hereinbefore specifically excepted.

Provided, Nevertheless, That if the said Borrower, its heirs, administrators, executors or assigns, shall pay to the Lender, its successors or assigns, the sum of One Hundred Sixty Seven Thousand Seven Hundred Ninety Nine and 29/100 DOLLARS, (\$ 167,799.29) according to the terms of that certain Note of even date herewith, executed by Borrower, and payable to Lender (the "Note"), with interest thereon at the rate set forth in the Note and hereinafter, and shall repay to said Lender, its successors or assigns, at the time and with interest as hereinafter specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees provided for hereinafter and sums advanced for any other purpose authorized herein; and shall keep and perform all the covenants and agreements herein contained, then this deed shall be null and void, and shall be released at the Borrower's expense.

3. Borrower shall pay the principal sum of money and interest as set forth herein and in the Note. Interest accrues under the Note at the rate of 9.25% per annum.

4. Borrower shall keep the buildings upon the Property insured against hazards covered by fire and extended coverage insurance policies in a company and in an amount satisfactory to Lender during the existence of the debt secured by this Mortgage and the policies of insurance will name the Lender as loss payee. Borrower shall provide Lender with acceptable evidence of this insurance. Full power is given to the Lender to settle and compromise all claims on all the policies, to demand, receive and receipt for all monies becoming payable under the policies and to apply the monies to the payment of all amounts due under this Mortgage in inverse order of maturity. Borrower shall pay the prior encumbrances of record (if any) as the same become due, and to pay the insurance premiums and pay all taxes and installments of special assessments levied or assessed against the Property, or any part thereof, before penalty attaches, and shall perform all of the covenants in this Mortgage and in prior encumbrances of record (if any) and in case of failure to do so, the Lender may pay the prior encumbrances and the interest thereon, as the same become due, and the taxes and assessments and hazard insurance premiums, and the sum or sums which may be so paid by the Lender in payment of these prior encumbrances and the interest on these encumbrances, or in payment of taxes and assessments or insurance premiums, will be deemed and are hereby declared to be added to the unpaid balance of the indebtedness secured by this Mortgage, the amount which will be so paid will be immediately due and payable and will bear interest until repaid at the interest rate set forth in the Note for the principal indebtedness thereof.

5. If the Borrower fails to perform the covenants contained in this Mortgage or if any action or proceeding is begun which materially affects Lender's interest in the Property, including, by not limited to, eminent domain, proceedings under the United States Bankruptcy Code, uniform commercial code security interest enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the Lender at Lender's option may make such appearances, disburse such sums and take action as is necessary to protect Lender's interest, including, but not limited to, entry upon the Property to make repairs. Any amounts disbursed by Lender under this paragraph will be deemed and are hereby declared to be added to the unpaid balance of the indebtedness secured by this Mortgage, and the amount so paid will be immediately due and payable and will bear interest until repaid at the interest rate set forth in the Note for the principal indebtedness thereof. Nothing contained in this paragraph or the preceding paragraph will require Lender to incur any expense or take any action.

6. Borrower shall not sell, assign, convey or mortgage the legal or equitable title or both legal and equitable title to all or any portion of the Property without the written consent of Lender.

7. If there is a default under any of the terms and provisions of this Mortgage, or the Note secured by this Mortgage, the Lender has the right to accelerate this Mortgage according to Minnesota statutes. Before beginning such foreclosure, the Lender will send a written notice of any default under the terms or conditions of the Note or Mortgage to the Borrower, setting forth (1) the nature of the default by the Borrower and the action required to cure the default; (2) the date by which the default must be cured (this date must be not less than 30 days from the date the notice is mailed to the Borrower); (3) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and the sale of the Property; (4) that the Borrower has the right to reinstate the Mortgage after acceleration; (5) that the Borrower has the right to bring a court action to assert the nonexistence of a default or any other defense of the Borrower to acceleration and sale.

2043rf
Exhibit A

The Lender does not need to send this notice if the default consists of the Borrower selling the Property or any part thereof, without the required consent of the Lender or otherwise violating the covenant set forth in Paragraph 8 hereinaabove. The notice will be sent by certified mail to the Property Address or such other address as the Borrower may have designated in writing to the Lender. After the date specified in the notice for curing the default has expired without cure of the default (or immediately upon default if no notice is required) the Lender is hereby authorized and empowered, at its option, to declare the whole unpaid amount secured by this Mortgage immediately due and payable without further notice to the Borrower, and to sell the Property at public auction or by judicial proceedings and to convey the same to the purchaser, in fee simple, according to the Statutes in such case made and provided, and out of the monies arising from the sale, to retain the sums and all other sums which will then be due under the terms of this Mortgage, together with all statutory costs and charges for such foreclosure to the extent permitted by law, including lawful attorneys fees incurred in connection with such foreclosure, and to pay the overplus, if any, to the Borrower.

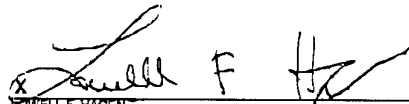
If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon the person, if any, in possession of the Property. Lender shall publish a notice of sale and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all sums secured by this Mortgage; (b) to all reasonable costs and expenses of the sale, including, but not limited to, costs of title evidence and attorney's fees as agreed hereinabove; and (c) the excess, if any, to the person or persons legally entitled thereto.

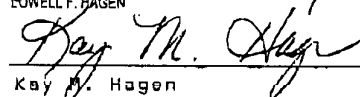
The covenants and agreements herein contained will bind, and the rights hereunder will belong to the respective heirs, successors and assigns of the Borrower and Lender. The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

Borrower waives all rights of homestead exemption in the property covered by this Mortgage.

Lender has provided Borrower with a conformed copy of the Loan Agreement, and Borrower's signature below is acknowledgment by Borrower of the receipt of such Loan Agreement copy. Lender shall provide Borrower with a conformed copy of this Mortgage upon its execution by Borrower or within a reasonable time after this Mortgage is recorded.

IN TESTIMONY WHEREOF, the Borrower has hereunto set its hand the day year first above written.




LOWELL F. HAGEN


Kay M. Hagen

STATE OF MINNESOTA
COUNTY OF HENNEPIN

} ss.

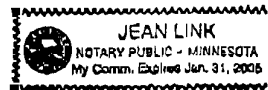
The foregoing instrument was acknowledged before me this 19th day of October, 2001
by Lowell F. Hagen and Kay M. Hagen, husband and wife, as joint tenants
and (stated marital status)



Notary Public

This instrument was drafted by:

CitiFinancial Mortgage Industrial Loan Company
8333 Ridgepoint Dr.
Irving, TX 75063



1-31-05

Office of Registrar of Deeds,

State of Minnesota,

County of

I hereby certify that the within Mortgage was filed in this office for record on the _____ day of _____, at _____ o'clock _____ M., and was duly recorded in Book _____ of Mortgages, page _____ or

☐ Xeroxed

☐ Microfilmed

and was duly recorded as instrument No. _____

By _____ Deputy.

Registrar of Deeds.

ITEM 24321 2 (0000)

No.

TORRENS

Receipt # <u>109582/4104</u>	<input type="checkbox"/> Certified Copy Date Mailed _____
Date/Time: <u>11/01/01 1:55</u>	<input type="checkbox"/> Tax Liens / Releases
Doc. Order <u>1</u> of <u>1</u>	<input type="checkbox"/> Multi-Co Doc Tax Pd
✓ by: Recordability: <u>leg</u>	<input type="checkbox"/> Transfer <input type="checkbox"/> New Desc.
Filing Fees: <u>199</u>	<input type="checkbox"/> Division <input type="checkbox"/> GAC
Well Certificate Received this Date: _____	<input type="checkbox"/> Status <input type="checkbox"/> Det. Spec
Refund Post # _____	<input type="checkbox"/> Other <input checked="" type="checkbox"/> No Change
Notes: _____	
From: <u>61572 A</u> # of _____	Comp. _____
Cent. # _____	Entry _____
Tract _____	Comp. _____
Updated: _____	Complete _____

BK 266 PG 61572 NO 61572

DOCUMENT NO. 383238.0 TORRENS
ANOKA COUNTY MINNESOTA

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE
FOR RECORD ON NOV 01 2001
AT 3:55 PM AND WAS DULY RECORDED.
FEES AND TAXES IN THE AMOUNT OF \$410.44 PAID.

RECEIPT NO. 2001109582

~~XXXXXXXXXX~~ MAUREEN J. DEVINE
ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES
TAP
BY _____
DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

Recording Requested by &
When Recorded Return To:
US Recordings, Inc.
2925 Country Drive Ste 201
St. Paul, MN 55117
8699022



U08699822-01AL03
MORTGAGE
REF# 8699022
US Recordings

383238.0 TORRENS
C I TITLE/US RECORDINGS INC
2925 COUNTRY DRIVE
SUITE 201
ST PAUL, MN 55117

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Lowell Floyd Hagen and Kay Mary Hagen,

Debtors: Chapter 13 Case
Case No. BKY 04-41058-RJK.

MEMORANDUM OF LAW

CitiFinancial Mortgage Industrial Loan Company (**Movant**) submits this memorandum of law in support of its motion for relief from the stays in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on certain real property owned by Debtors. Debtors' confirmed Chapter 13 Plan (**Plan**) requires Debtors to make post-petition mortgage payments directly to Movant, when due. Debtors are delinquent in respect to post-petition mortgage payments for the months of August 2004 through October 2004 in the amount of \$4,141.32. Kay M. Hagen, a co-mortgagor, is also liable on the mortgage.

ARGUMENT

Under §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. §362(d)(1). Debtors have failed to make the payments required by the terms of the Plan. Such a failure constitutes cause for lifting the automatic stay pursuant to 11 U.S.C. §362(d)(1). First Federal Savings and Loan

Association of Minneapolis v. Whitebread, 18 B.R. 192 (Bkrtcy. D. Minn. 1982).

Furthermore, debtors have otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stays of 11 U.S.C. §362(a), §1301(a) and authorizing it to foreclose its mortgage on the property.

Dated this 15th day of October, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Steven H. Bruns

Steven H. Bruns

Atty. Reg. #14888X

Attorneys for Movant

Suite 300, 50 East Fifth Street

St. Paul, Minnesota 55101

Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Lowell Floyd Hagen and Kay Mary Hagen,

Debtors: Chapter 13 Case
Case No. BKY 04-41058-RJK.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Steven H. Bruns, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on October 15, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee
300 S 4th St # 1015
Minneapolis MN 55415-1329

Lowell Floyd Hagen and
Kay Mary Hagen
3201-16th Avenue
Anoka, MN 55303

Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Bldg.
12 S 6th Street
Minneapolis MN 55402

Timothy C. Theisen, Esq.
229 Jackson Street, Suite 105
Anoka, MN 55303

And I declare, under penalty of perjury, that the foregoing is true and correct.

Signed: /e/ Steven H. Bruns

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Lowell Floyd Hagen and Kay Mary Hagen,

Debtors: Chapter 13 Case
Case No. BKY 04-41058-RJK.

ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter came before the Court on November 4, 2004, on the motion of CitiFinancial Mortgage Industrial Loan Company (**Movant**) seeking relief from the automatic stays of 11 U.S.C. §362(a)s. Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stays of 11 U.S.C. §362(a) and §1301 are immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated October 19, 2001, filed for record in the office of the County Recorder in and for Anoka County, Minnesota, on November 1, 2001 as Document No. 383238 and covering real property located in Anoka County, Minnesota, which is legally described as follows:

Lot 20, Block 1, Anoka Meadows Second Addition, Anoka County, Minnesota.

Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

November __, 2004

Robert J. Kressel
United States Bankruptcy Judge